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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. | | | | |
|---|---------------|----------------------|---|------------------|---------------|------------|-----------------|--|
| 10/811,164 | 03/26/2004 | Steve Baudin | 7000-323 | 2009 | | | | |
| 27820 7590 07/13/2007 WITHROW & TERRANOVA, P.L.L.C. 100 REGENCY FOREST DRIVE SUITE 160 CARY, NC 27518 | | | <table border="1"><tr><td colspan="2">EXAMINER</td></tr><tr><td colspan="2">WENDELL, ANDREW</td></tr></table> | | EXAMINER | | WENDELL, ANDREW | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/811,164

Applicant(s)

BEAUDIN ET AL.

Examiner

Andrew Wendell

Art Unit

2618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/14/2007 has been entered.

Double Patenting

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Claims 2-15 and 17-30 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 13-26 of prior U.S. Patent No. 7,181,243. This is a double patenting rejection.

Regarding claim 2, method claim 2 is rejected for the same reason as apparatus claim 17 since the recited elements would perform the claimed steps.

Regarding claim 3, method claim 3 is rejected for the same reason as apparatus claim 18 since the recited elements would perform the claimed steps.

Regarding claim 4, method claim 4 is rejected for the same reason as apparatus claim 19 since the recited elements would perform the claimed steps.

Regarding claim 5, method claim 5 is rejected for the same reason as apparatus claim 20 since the recited elements would perform the claimed steps.

Regarding claim 6, method claim 6 is rejected for the same reason as apparatus claim 21 since the recited elements would perform the claimed steps.

Regarding claim 7, method claim 7 is rejected for the same reason as apparatus claim 22 since the recited elements would perform the claimed steps.

Regarding claim 8, method claim 8 is rejected for the same reason as apparatus claim 23 since the recited elements would perform the claimed steps.

Regarding claim 9, method claim 9 is rejected for the same reason as apparatus claim 24 since the recited elements would perform the claimed steps.

Regarding claim 10, method claim 10 is rejected for the same reason as apparatus claim 25 since the recited elements would perform the claimed steps.

Regarding claim 11, method claim 11 is rejected for the same reason as apparatus claim 26 since the recited elements would perform the claimed steps.

Regarding claim 12, method claim 12 is rejected for the same reason as apparatus claim 27 since the recited elements would perform the claimed steps.

Regarding claim 13, method claim 13 is rejected for the same reason as apparatus claim 28 since the recited elements would perform the claimed steps.

Regarding claim 14, method claim 14 is rejected for the same reason as apparatus claim 29 since the recited elements would perform the claimed steps.

Regarding claim 15, method claim 15 is rejected for the same reason as apparatus claim 30 since the recited elements would perform the claimed steps.

Regarding claim 17, Nicholls teaches wherein the first receive signal centered about the second center frequency is combined with the second receive signal centered about the first center frequency to form the composite signal (Claim 13).

Regarding claim 18, Nicholls teaches wherein the first center frequency and the second center frequency are sufficiently spread to minimize interference between the first and second receive signals in the composite signal (Claim 14).

Regarding claim 19, Nicholls teaches second translation circuitry adapted to translate the second receive signal from the second antenna to being centered about a third center frequency, wherein the first receive signal centered about the second center frequency is combined with the second receive signal centered about the third center frequency to form the composite signal (Claim 15).

Regarding claim 20, Nicholls teaches wherein the second center frequency and the third center frequency are sufficiently spread to minimize interference between the first and second receive signals in the composite signal (Claim 16).

Regarding claim 21, Nicholls teaches wherein the second antenna is a main antenna also used to transmit signals centered about the first center frequency, and the first antenna is a diversity antenna associated with the second antenna, the base station electronics further comprising circuitry adapted to transmit a transmit signal via the main antenna (Claim 17).

Regarding claim 22, Nicholls teaches wherein a plurality of receive signals, including the second receive signal, are received and translated to being centered about different center frequencies and combined to form the composite signal (Claim 18).

Regarding claim 23, Nicholls teaches in the base housing: a) transceiver circuitry; and b) separation circuitry adapted to separate the first and second receive signals from the composite signal in the base station electronics, wherein the first and second receive signals are provided to transceiver circuitry (Claim 19).

Regarding claim 24, Nicholls teaches in the base housing, second translation circuitry adapted to translate the first receive signal to being centered about the first center frequency prior to providing the first receive signal to the transceiver circuitry (Claim 20).

Regarding claim 25, Nicholls teaches wherein the second receive signal is translated to a third center frequency before being combined with the first receive signal to form the composite signal, and further comprising third translation circuitry adapted to translate the second receive signal to being centered about the first center frequency prior to providing the second receive signal to the transceiver circuitry (Claim 21).

Regarding claim 26, Nicholls teaches wherein the first and second receive signals correspond to a cellular signal transmitted from a cellular communication device (Claim 22).

Regarding claim 27, Nicholls teaches wherein the first and second antennas are associated with one of a plurality of sectors for the base station environment (Claim 23).

Regarding claim 28, Nicholls teaches wherein each sector uses one feeder cable between the masthead and the base housing (Claim 24).

Regarding claim 29, Nicholls teaches wherein the first center frequency is associated with a first cellular band and a fourth center frequency is associated a second cellular band; a third receive signal centered about a third center frequency is received via the first input from the first antenna; a fourth receive signal centered about the third center frequency is received via the second input from the second antenna, the base station electronics in the masthead further comprising second translation circuitry adapted to translate the third receive signal from the first antenna to being centered about a fourth center frequency, the combining circuitry further adapted to combine the third receive signal centered about the third center frequency and the second receive signal to form at least part of the composite signal, which is send to the base housing over the feeder cable (Claim 25).

Regarding claim 30, Nicholls teaches further comprising third translation circuitry adapted to translate the fourth receive signal from the second antenna to being centered about the fourth center frequency, wherein the third receive signal centered about the fourth center frequency is combined with the fourth receive signal centered about the fourth center frequency to form at least part of the composite signal (Claim 26).

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4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See; e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1, 16, and 31 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 12 of U.S. Patent No. 7,181,243 in view of Javor et al. (US Pat Pub# 2004/0266356).

Regarding claim 1, method claim 1 is rejected for the same reason as apparatus claim 16 since the recited elements would perform the claimed steps.

Regarding claim 16, Nicholls teaches Base station electronics for combining signals for transmission between a masthead and a base housing in a base station environment, the base station electronics comprising in the masthead: a) a first input adapted to receive a first receive signal centered about a first center frequency from a first antenna; b) a second input adapted to receive a second receive signal centered about the first center frequency from a second antenna; c) first translation circuitry adapted to translate the first receive signal from the first antenna to being centered

about a second center frequency; and d) combining circuitry adapted to combine the first receive signal centered about the second center frequency and the second receive signal to form a composite signal, which is sent to base housing electronics over a feeder cable (Claim 12, note Nicholls claim 12 has more limitations than applicant's claim, but the claim is broader and still reads on Nicholls limitations). Nicholls fails to teach a first receive signal is different from a second receive signal.

Javor teaches a first receive signal is different from a second receive signal (Claim 14).

Therefore, it would have been obvious at the time of the invention to one of ordinary skill in the art at the time the invention was made to incorporate a first receive signal is different from a second receive signal as taught by Javor into Nicholls frequency translation apparatus in order to improve interference (Section 0001).

Regarding claim 31, system claim 31 is rejected for the same reason as apparatus claim 16 since the recited elements would perform the claimed steps.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 6-7, 11-13, 16-18, 21-22, 26-28, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuerter (US Pat# 6,125,109) in view of Katz (US

Pat# 7,069,051) and further in view of Yamamoto (US Pat Pub# 2003/0148747) and further in view of Javor et al. (US Pat Pub# 2004/0266356).

Regarding claim 1, method claim 1 is rejected for the same reason as apparatus claim 16 since the recited elements would perform the claimed steps.

Regarding claim 2, method claim 2 is rejected for the same reason as apparatus claim 17 since the recited elements would perform the claimed steps.

Regarding claim 3, method claim 3 is rejected for the same reason as apparatus claim 18 since the recited elements would perform the claimed steps.

Regarding claim 6, method claim 6 is rejected for the same reason as apparatus claim 21 since the recited elements would perform the claimed steps.

Regarding claim 7, method claim 7 is rejected for the same reason as apparatus claim 22 since the recited elements would perform the claimed steps.

Regarding claim 11, method claim 11 is rejected for the same reason as apparatus claim 26 since the recited elements would perform the claimed steps.

Regarding claim 12, method claim 12 is rejected for the same reason as apparatus claim 27 since the recited elements would perform the claimed steps.

Regarding claim 13, method claim 13 is rejected for the same reason as apparatus claim 28 since the recited elements would perform the claimed steps.

Regarding claim 16, Fuerter's delay combiner system for CDMA teaches a) a first input 32 (Fig. 2) adapted to receive a first receive signal centered about a first center frequency from a first antenna 16a (Fig. 2); b) a second input 32 (Fig. 2) adapted to receive a second receive signal centered about the first center frequency from a

second antenna 16n (Fig. 2); c) first translation circuitry 36 (Demodulators, Fig. 2) adapted to translate the first receive signal from the first antenna to being centered about a second center frequency; and d) combining circuitry 38 (Fig. 2) adapted to combine the first receive signal 16a (Fig. 2) centered about the second center frequency and the second receive signal 16n (Fig. 2) to form a composite signal 40 (Fig. 2), which is sent to base housing electronics over a feeder cable 44 (Fig. 2).

Fuerter fails to teach a first translation circuitry, a first receive signal is different from a second receive signal, and a base housing over a feeder cable.

Fuerter teaches demodulators 36 (Fig. 2) which could translate the signal but it is unclear about the details of the demodulator. Katz's data transmission system teaches a) a first input 111 (Fig. 2) adapted to receive a first receive signal centered about a first center frequency from a first antenna 140 (Fig. 2); b) a second input 111 (Fig. 2) adapted to receive a second receive signal centered about the first center frequency from a second antenna 141 (Fig. 2); c) first translation circuitry 112 and 113 (Fig. 2, going from RF signal to an IF signal broadband to narrowband) adapted to translate the first receive signal from the first antenna to being centered about a second center frequency (Col. 4 lines 58-63).

Therefore, it would have been obvious at the time of the invention to one of ordinary skill in the art at the time the invention was made to incorporate a first translation circuitry as taught by Katz into Fuerter's delay combiner system for CDMA in order to improve efficiency (Col. 2 lines 19-27).

Both Fuerter and Katz fail to teach a base housing over a feeder cable and a first receive signal is different from a second receive signal.

Yamamoto's radio base station teaches a composite signal which is sent to base housing 14 (Fig. 3) electronics over a feeder cable 13 (Fig. 3).

Therefore, it would have been obvious at the time of the invention to one of ordinary skill in the art at the time the invention was made to incorporate a base housing over a feeder cable as taught by Yamamoto into a first translation circuitry as taught by Katz into Fuerter's delay combiner system for CDMA in order to minimize error of a received signal (Sections 0035-0037).

Fuerter, Katz, and Yamamoto fail to teach a first receive signal is different from a second receive signal.

Javor teaches a first receive signal is different from a second receive signal (Claim 14).

Therefore, it would have been obvious at the time of the invention to one of ordinary skill in the art at the time the invention was made to incorporate a first receive signal is different from a second receive signal as taught by Javor into a base housing over a feeder cable as taught by Yamamoto into a first translation circuitry as taught by Katz into Fuerter's delay combiner system for CDMA in order to improve interference (Section 0001).

Regarding claim 17, Fuerter further teaches wherein the first receive signal 16a (Fig. 2) centered about the second center frequency is combined 38 (Fig. 2) with the

second receive signal 16n (Fig. 2) centered about the first center frequency to form the composite signal (Fig. 2).

Regarding claim 18, Fuerter further teaches wherein the first center frequency and the second center frequency are sufficiently spread to minimize interference 36 (Rake Fingers, Fig. 2) between the first 16a (Fig. 2) and second 16n (Fig. 2) receive signals in the composite signal.

Regarding claim 21, Fuerter further teaches wherein the second antenna is a main antenna also used to transmit signals centered about the first center frequency, and the first antenna is a diversity antenna associated with the second antenna, the base station electronics further comprising circuitry adapted to transmit a transmit signal via the main antenna (Fig. 7).

Regarding claim 22, Katz further teaches wherein a plurality of receive signals, including the second receive signal 141 (Fig. 2), are received and translated 112 and 113 (Fig. 2, going from RF signal to an IF signal and broadband to narrowband) to being centered about different center frequencies (can vary IF signal through the oscillator and mixer).

Regarding claim 26, Fuerter further teaches wherein the first and second receive signals correspond to a cellular signal transmitted from a cellular communication device (Col. 2 lines 50-51).

Regarding claim 27, Fuerter further teaches wherein the first and second antennas are associated with one of a plurality of sectors for the base station environment 39 (Fig. 2).

Regarding claim 28, Yamamoto further teaches wherein each sector uses one feeder cable 13 (Fig. 3) between the masthead 12 (Fig. 3) and the base housing 14 (Fig. 3).

Regarding claim 31, system claim 31 is rejected for the same reason as apparatus claim 16 since the recited elements would perform the claimed steps.

Response to Arguments

3. Applicant's arguments with respect to claims 1-31 have been considered but are moot in view of the new ground(s) of rejection.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Wendell whose telephone number is 571-272-0557. The examiner can normally be reached on 7:30-5 M-F.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay Maung can be reached on 571-272-7882. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Andrew Wendell
Examiner
Art Unit 2618

7/2/2007


NAY MAUNG
SUPERVISORY PATENT EXAMINER